IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.09.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE S. MANIKUMAR

W.A.No.573 of 2006

and WAMP.No.1537 of 2006

B. Elangovan
minor,aged 17 years
rep. By his father
and natural guardian
A. Balasubramanian. .. Appellant/Petitioner

vs.

1.The Secretary
Selection Committee
Director of Medical Education
162 E.V.R. Periyar High Road
Kilpauk, Chennai 10.

2.The Director of Medical
Education,
162 E.V.R. Periyar High Road
Kilpauk, Chennai 10.

3.Karunakaran
(added as per the order of
Court dated 14.11.2005 in
WPMP.No.36291/2005) .. Respondents/Respondents

Writ Appeal is filed under Clause15 of the Letters Patent against the order of the learned single Judge of this Court dated 15.03.2006 made in W.P.No.28540 of 2005.

W.P.No.28540 of 2005:- Petition filed under Article 226 of the constitution of India to issue a Writ of Mandamus directing like nature writing the respondents to allot the petitioner one seat in MBC Quata for M.B.B.S Course either in Govt College or in the self financed Colleges in pursuance of the coounselling for admission to M.B.B.S Course held on 27.8.2005 in the campus of Directorate of Medical Education, Kilpauk Chennai.

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For appellant : Mr. O.R. Abdul Kalam

For respondents: Mr. M. Sekar

1 and 2 Spl. Govt., Pleader (Edn.)

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JUDGMENT

(Judgement of the Court was delivered by P. SATHASIVAM,J.)

The writ appeal is directed against the order of the learned Single Judge dated 15.3.2006 made in W.P.No.28540 of 2005, in and by which the learned Judge declined to accept the claim of the petitioner and dismissed the writ petition.

2. For the sake of convenience, we shall refer the parties as arrayed in the writ petition.

3. The main grievance of the petitioner is that his son's right of being considered for the allotment of seat in M.B.B.S. Course has been illegally taken away by the Secretary, Selection Committee, Director of Medical Education, Chennai, first respondent herein, in the Counselling held on 27.8.2005, despite the fact that his son's name was found in the wait-list. It is also his grievance that a seat was allotted to one whose name had not been found in the wait-list. According to him, his son belongs to Most Backward Community (M.B.C.), he secured 1167 marks out of 1200 in the Higher Secondary Course Examinations held in March, 2005, he secured 200/200 in Physics, 200/200 in Chemistry and 199/200 in Biology, he secured 92.92% in Biology Group and he secured the cut-off marks of 292.42 and he held the communal rank at 360.

3 (a) The case of the petitioner is that his son received a call letter for Counselling scheduled to be held on 24.7.2005, he attended the Counselling on the said date and during the Counselling on 24.7.2005, since seven seats were available in I.R.T. Institute, ten seats were available in P.S.G. Institute and in-toto seventeen seats were available in self-financing institutes, his son did not secure allotment of a seat in the Counselling held on 24.7.2005. According to him, a candidate, by name, Karunakaran, third respondent herein, whose cut-off mark is 292.75, also attended the Counselling held on 24.7.2005 and since the Counselling was commenced from the cut-off mark 293 and ended at the cut-off mark 292.50, the said Karunakaran could have availed one seat, had he wished to take a seat in I.R.T. Institute

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or P.S.G. Institute where there were seventeen seats available, but the said Karunakaran did not opted for a seat among the said seventeen seats available in the aforesaid private institutes. He has stated that since his son did not get an allotment on 24.7.2005, he opted for I.R.T./P.S.G. Institute and Government Institutions. It is his case that as per the wait-list prepared as on 20.8.2005, his son occupied 10th place in respect of I.R.T. Institute and 5th place in respect of P.S.G. Institute and the said Karunakaran opted for Government institutions and not for the two private institutes, viz., I.R.T. and P.S.G.

4. The petitioner claimed that the second Counselling was scheduled on 27.8.2005 and at that time, there were two seats in Tuticorin Government Medical College and four seats in Kanyakumari Government Medical College available under M.B.C. Quota and when the Counselling commenced, five candidates from the list of I.R.T. Institute left for Government Medical Colleges and in rotation, the said five seats in I.R.T. Institute could be filled up by taking five candidates available in the wait-list in P.S.G. Institute, but, only four candidates from the wait-list of P.S.G. Institute were taken and accommodated in I.R.T. Institute and the fifth seat that had to come to his son was allotted to the said Karunakaran who opted for other category on 24.7.2005. According to the petitioner, the said Karunakaran never availed the seat in I.R.T. Institute in the Counselling on 24.7.2005, but opted for other category such as, Dental Course and he never opted for I.R.T. or P.S.G. Institute and his name was never found in I.R.T. or P.S.G. Wait-list, but he was accommodated and his son was wantonly ignored. Hence, he filed the writ petition before this Court.

5. The learned Single Judge, by order dated 15.3.2006, after finding that the third respondent was selected on the basis of his cut-off mark and that he had opted for and placed in wait-list for both Government and I.R.T. Institutes and taking note of the fact that the petitioner secured the cut-off mark 292.42 only whereas the third respondent secured the cut-off mark 292.75, rejected the claim of the petitioner and consequently, dismissed the writ petition. Hence, the present writ appeal.

6. Heard Mr.O.R.Abul Kalaam, learned counsel appearing for the appellant/petitioner and Mr.M.Sekar, learned Special Government Pleader for the respondents 1 and 2. The third respondent, though served notice in the writ appeal through Court, has not chosen to contest the case.

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7. Learned counsel for the appellant/petitioner vehemently contended that though the third respondent had not opted for I.R.T. Institute at Perunthurai and his name was not found in the wait-list for I.R.T. Institute, yet, in the Counselling held on 27.8.2005, he was allotted a seat. According to him, the third respondent opted only for Government Colleges and in such circumstances, the selection of the third respondent by the Selection Committee is bad and the learned Single Judge committed an error in upholding the action of the Selection Committee.

8. Learned Special Government Pleader appearing for the respondents 1 and 2, after furnishing the relevant details, submitted that there is no error or flaw in the selection of the third respondent and inasmuch as the petitioner's son has not secured more marks than the third respondent, the first respondent cannot be blamed for his non-selection.

9. We have perused the relevant materials and considered the rival contentions. It is not in dispute that the son of petitioner had applied for M.B.B.S./B.D.S. Course, 2005-06 and he secured 292.42 marks as aggregate. The counter affidavit filed by the first respondent shows that the son of the petitioner stood at 1801 position in the general merit list and in community at 360 and he belongs to M.B.C. According to the first respondent, since more number of candidates were called for Counselling than the actual number of vacancies, the petitioner was wait-listed for Government, I.R.T. and P.S.G. Medical Colleges, as per his option. Though it was expected that the absentees would be more in number, it was not actually so and the son of the petitioner was placed as 12th candidate in the wait-list for M.B.B.S. Course in I.R.T. Institute and 5th place in P.S.G. Institute and he opted out of B.D.S. Course both in Government and Self-financing colleges.

10. The counter affidavit filed by the first respondent further shows that the Director General of Health Services surrendered certain vacancies that arose due to non-joining of candidates under All India Quota on 22.8.2005, and few vacancies also accrued in M.B.B.S. course in Government Medical Colleges under State Quota due to non-joining of candidates allotted during the counselling held from 20.7.2005 to 23.7.2005 and in order to fill up those vacancies, a counselling was held on 27.8.2005 and to fill up the vacancies that would arise out of movement of candidates from I.R.T./Self-financing Colleges, another counselling was also held on the same day. According to the first respondent, the petitioner was also called for counselling for the consequential vacancies that would arise in I.R.T. and P.S.G. Institutes. It is stated by the first respondent that the third

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respondent Karunakran was also called for the counselling for allotment of M.B.B.S. seat in Government Medical Colleges. It is further stated that the allotment was made only up to the candidates in M.B.C. with total mark of 292.83 according to the vacancies available and the remaining candidates were wait-listed for M.B.B.S. seats in Government Medical Colleges. It is stated that among the wait-listed candidates, a candidate, by name, A.S.Arumai with the mark 292.83 (Wait-list No.1 for IRT) and the third respondent with the mark 292.75 (Wait-list No.2 for ITR) were allotted to I.R.T. Perundurai Medical College on the same day in the vacancies that arose out of the movement of candidates to Government Medical Colleges on merit basis considering the wait-list and thereafter the petitioner was wait-listed for I.R.T. Medical College, Perundurai at 7th position for want of vacancy.

11. Though in the counter affidavit there is no specific reference as to whether the third respondent had opted for both the Government and I.R.T. Institute, Perundurai, learned Special Government Pleader, on specific instructions, informed that the third respondent had opted for both the Government and I.R.T. Institutes and accordingly he was placed in the wait-list. This aspect was highlighted by the learned Judge in para-4 of his order. The learned Judge on facts has found that the application form duly filled in by the third respondent, counter-signed by his parents and produced before the Selection Committee on 24.7.2005 shows that he opted not only for Government Colleges, but also for I.R.T. Institute. In view of the same and of the fact that the third respondent secured 292.75 marks which is more than that of the petitioner, viz., 292.42, the third respondent was rightly selected and allotted to I.R.T. Institute on the basis of merits and this aspect was fully considered by the learned Judge.

12. Though the learned counsel for the petitioner disputed the above factual position, in view of the specific factual findings by the learned Judge as well as the submissions made before us by the learned Special Government Pleader, we are unable to accept the arguments of the learned counsel for the appellant/petitioner. Inasmuch as both the petitioner and the third respondent belong to M.B.C. and the third respondent secured more marks (292.75) than that of the petitioner (292.42), we are unable to countenance the arguments of the learned counsel for the appellant/petitioner. On the other hand, we are in agreement with the conclusion arrived at by the learned Judge.

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Under these circumstances, the appeal fails and the same is dismissed. No costs. Consequently, connected WAMP., is dismissed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Secretary
Selection Committee
Director of Medical Education
162 E.V.R. Periyar High Road
Kilpauk, Chennai 10.

2.The Director of Medical
Education,
162 E.V.R. Periyar High Road
Kilpauk, Chennai 10.

+ 2 ccs to Mr. O. R. Abdulkalaam, Advocate SR No. 41209

JE(CO)
SR/11.9.2006

Pre-delivery Judgement
in
W.A.No.573 of 2006

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